IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE THIRTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 22988 of 2004

Between:

M/s. Sri Srinivasa Wines, Mothukur, rep.by its Licensee

K.Nagarjunareddy,
S/o.Narsireddy, R/o.Mothukur,
Nalgonda District.

..... PETITIONER

AND

1 Prohibition & Excise Superintendent, Nalgonda District, Nalgonda Dist.
2 Prohibition & Excise Sub-Inspector, Mothukur Range, Nalgonda District.

.....RESPONDENS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other writ, order or direction, declaring the proceedings of the 1st respondent in procgs.in. CR.No.1687/2004/E1 dt. 4-12-2004 suspending the licence of the petitioner as illegal, arbitrary and violative of principles of Natural Justice and set aside the same, and pass such other order as may deem fit.

Counsel for the Petitioner:MR.P.BALAMUKUNDA RAO

Counsel for the Respondent No.: GP FOR PROHIBITION & EXCISE

The Court at the stage of admission made the following ORDER:

Petitioner is a licencee under Form FL 24. His licence is said to be valid up to 31.03.2005. Through his order dated 04.12.2004, the Prohibition & Excise Superintendent, Nalgonda, the first respondent, suspended the licence of the petitioner, on the allegation that he was found to be in possession of certain quantity of spurious liquor. The same is challenged in this writ petition.

Learned counsel for the petitioner submits that it is mandatory for the respondents to issue a show cause notice before suspending the licence and the impugned order is not preceded by such notice. He contends that the suspension was ordered, as a substantive measure and not as the one pending enquiry. He places reliance upon the Judgment of a Division Bench of this Court in *Goka Bujjamma v. Prohibition and Excise Superintendent, Srikakulam*.

Learned Government Pleader for Prohibition& Excise, on the other hand, submits that the suspension ordered against the petitioner is a measure pending enquiry and in the interest of public. It is contended that such an order need not be preceded by an enquiry, as held by this Court in several cases.

The licence of the petitioner was suspended on the allegation that he was found

to be in possession of spurious liquor. Section 31 of the A.P. Excise Act (for short 'the Act') provides for suspension of licence. According to the proviso to sub-section (1) thereof, before suspending or cancelling a licence, the licencing authority must issue a show cause notice and hear the affected party. The Act or the Rules made there under do not provide for suspension, as a measure pending enquiry. The suspension referred to in section 31 of the Act is always treated as a substantive punishment or penalty. A Full Bench of this Court held that where the suspension is ordered as a measure pending enquiry, and in public interest, it need not be preceded by any show cause notice, much less an enquiry. Such a view was taken on the general principle of law that a licencing authority has inherent power to suspend the same. Therefore, much would depend on the nature of suspension ordered by the licencing authority.

In the instant case, the first respondent did not indicate that the suspension of the licence of the petitioner is ordered as a measure pending enquiry. The expression "pending enquiry" does not occur in the impugned order. Therefore, it has to be treated as a substantive punishment. In such an event, it ought to have been preceded by a show cause notice, as contemplated under proviso to sub-section (1) of Section 31 of the Act. Admittedly, no such notice was issued. In the case cited supra, a Division Bench of this Court held that such orders cannot be sustained in law. On this short ground, the impugned order is set aside. It is, however, left open to the first respondent either to proceed against the petitioner to pass final orders after issuing show cause notice or to suspend the licence pending enquiry. Till such orders are passed, the petitioner shall be entitled to carry on the business in accordance with the conditions of licence.

The writ petition is accordingly allowed. No order as to costs.

13.12.2004

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To

1 Prohibition & Excise Superintendent, Nalgonda District, Nalgonda Dist.
2 Prohibition & Excise Sub-Inspector, Mothukur Range, Nalgonda District.

3 Two CCs. to the G.P. for Prohibition & Excise, High Court of A.P.,

Hyderabad (OUT).

4 Two CD copies.